



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision

08.09.2025

Name of the Builder		EMERALD HOME DEVELOPERS PVT. LTD.		
Project Name		EMERALD HEIGHTS, FARIDABAD, HARYANA		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	1378/2020	Mr. Parmod Kumar Maheshwari S/o Late Sh. Jagdish Prasad Maheshwari H NO. 143, Sector-11 C, Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. Registered office:- H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044	Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.	Mr. Neeraj Goel, Counsel for respondent.
2.	1379 /2020	Mr. Mal Chand Jajoo S/o Late Sh. Dan Mal Jajoo, H NO. 67, Near Mother Diary, Sector -3, Faridabad, Haryana Mrs. Sunita Jajoo W/o Mal Chand Jajoo, H NO. 67, Near Mother	Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.	Mr. Neeraj Goel, Counsel for respondent.

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		Diary, Sector -3, Faridabad, Haryana Vs. M/s. Emerald Home Developers Pvt. Ltd. <u>Registered office:-</u> H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 <u>Site Office at Emerald House:</u> Sector, Kheri Road, Greater Faridabad-121002		
3.	1383/2020	Mrs. Babita Maheshwari W/o Sh. Manoj Kumar Maheshwari H NO. 143, Sector-11 C, Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. <u>Registered office:-</u> H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 <u>Site Office at Emerald House:</u> Sector, Kheri Road, Greater Faridabad-121002	Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.	Mr. Neeraj Goel, Counsel for respondent.
4.	1387/2020	Ms. Chesta Maheshwari D/o Sh. Parmod Maheshwari H NO. 143, Sector-11 C, Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. <u>Registered office:-</u> H.NO. 210, Ground Floor,	Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.	Mr. Neeraj Goel, Counsel for respondent.



		Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 <u>Site Office at Emerald</u> <u>House:</u> Sector, Kheri Road, Greater Faridabad-121002		
5	1472/2020	Mr. Kapil Maheshwari S/o Sh. Brij Mohan Maheshwari H. NO. 20, Sector 3, Ballabgarh, Faridabad, Haryana-121006. & H. NO. 143, Sector-11 C, Faridabad, Haryana-121006. Mrs. Sonia Maheshwari W/o Sh. Kapil Maheshwari HNO. 20, Sector 3, Ballabgarh, Faridabad, Haryana-121006. & H. NO. 143, Sector-11 C, Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. <u>Registered office:-</u> H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 <u>Site Office at Emerald</u> <u>House:</u> Sector, Kheri Road, Greater Faridabad-121002	Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.	Mr. Neeraj Goel, Counsel for respondent.
6	1473/2020	Mr. Parmod Kumar Maheshwari S/o Late Sh. Jagdish Prasad Maheshwari H. NO. 143, Sector-11 C,	Mr. Parmod Kumar Maheshwari complainant of	Mr. Neeraj Goel, Counsel for respondent.



		<p>Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. Registered office:- H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 Site Office at Emerald House: Sector, Kheri Road, Greater Faridabad-121002</p>	<p>complaint no. 1378 of 2020 in person.</p>	
7	1476/2020	<p>Late Sh. Meena Maheshwari D/o Late Jagdish Prasad Maheshwari through legal Heir Mr. Pramod Kumar Maheshwari H. NO. 143, Sector-11 C, Faridabad, Haryana-121006. Vs. M/s. Emerald Home Developers Pvt. Ltd. Registered office:- H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 Site Office at Emerald House: Sector, Kheri Road, Greater Faridabad-121002</p>	<p>Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in person.</p>	<p>Mr. Neeraj Goel, Counsel for respondent.</p>
8.	1477/2020	<p>Mr. Rahul Verma S/o Sh. Bhagwan Das Verma, H. NO. 67, Near Mother Diary, Sector 3, Ballabgarh, Faridabad, Haryana-121006</p>	<p>Mr. Parmod Kumar Maheshwari complainant of complaint no. 1378 of 2020 in</p>	<p>Mr. Neeraj Goel, Counsel for respondent.</p>

had

	<p>Mrs. Preeti Verma W/o Sh. Rahul Verma H. NO. 67, Near Mother Diary, Sector 3, Ballabgarh, Faridabad, Haryana-121006 Vs. M/s. Emerald Home Developers Pvt. Ltd. <u>Registered office:-</u> H.NO. 210, Ground Floor, Block E-3, Molar Band Extension, Badarpur, New Delhi-110044 <u>Site Office at Emerald House:</u> Sector, Kheri Road, Greater Faridabad-121002</p>	person.	
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ORDER (NADIM AKHTAR-MEMBER)

1. Captioned complaint was listed for hearing on 01.09.2025. However due to constitution of Benches, matter has been taken up today for hearing.
2. The details of the captioned complaints i.e. unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:



Project-Emerald Heights, Faridabad, Haryana

RERA Registered/not registered- registered

DTCP License no.- 124 of 2008

Flat Buyer Agreement has been executed on 16.08.2008 in all the cases.

Sr no	Complaint no./Date of filing	Written Submission	Unit no.	Date of BBA executed/ DDOP	Total sale consideration (TSC) and Paid amount	Offer of possession given or not given
1.	1378-2020 26.11.2020	Filed on 02.11.2023	Flat no. 907, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹40,00,000/- Paid amount: ₹20,67,913/-	Not given
2.	1379-2020 26.11.2020	Filed on 02.11.2023	Flat no. 905, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹41,58,000/- Paid amount: ₹37,13,260/-	Not given
3.	1383-2020 26.11.2020	Filed on 02.11.2023	Flat no. 902, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹40,00,000/- Paid amount: ₹35,72,153/-	Not given
4.	1387-2020 26.11.2020	Filed on 02.11.2023	Flat no. 903, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹40,00,000/- Paid amount: ₹31,72,153/-	Not given
5.	1472-2020 17.12.2020	Filed on 02.11.2023	Flat no. 901, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹41,58,000/- Paid amount: ₹36,86,860/-	Not given
6.	1473-2020 17.12.2020	Filed on 02.11.2023	Flat no. 908, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹41,58,000/- Paid amount: ₹21,49,594/-	Not given
7.	1476-2020 17.12.2020	Filed on 02.11.2023	Flat no. 906, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹40,00,000/- Paid amount: ₹35,72,153/-	Not given
8.	1477-2020 17.12.2020	Filed on 02.11.2023	Flat no. 904, 9 th Floor, Tower A.	16.08.2016 DDOP- 16.08.2018	TSC: ₹41,58,000/- Paid amount: ₹37,13,260/-	Not given

had

3. The core issues emanating from the above captioned complaints are similar in nature. The complainant in complaint No. 1378 of 2020 and above referred all other captioned complaints are allottees of the project namely; "Emerald Heights" being developed by the same respondent/promoter, i.e., Emerald Home Developers Pvt. Ltd. This order is being passed by taking the complaint no. 1378/2020 titled as "Parmod Kumar Maheshwari vs Emerald Home Developers Pvt. Ltd" as a lead case.

A. FACTS OF THE LEAD COMPLAINT No. 1378 OF 2020

4. That the complainant on 16.08.2016 booked a Flat No. 907, 9th Floor, Tower A, comprising of a 2 BHK unit having super area of 1260 sq. ft. in the group housing project "Emerald Heights" being developed by the respondent. The project is duly registered under RERA Registration No. 158 of 2017 dated 29.08.2017. An Apartment Buyer Agreement ("ABA") was executed between the parties on 16.08.2016, a copy of which is annexed as Annexure C-1.
5. That as per Clause 1 of the ABA, the total sale consideration for the said flat was fixed at ₹40,00,000/-. The complainant paid an upfront sum of ₹20,67,913/- on 10.08.2016 as part payment of the total sale consideration of the apartment.



6. That Clause 22 of the ABA obligated the respondent to deliver possession of the unit within 24 months from the date of execution of the agreement, i.e., on or before 16.08.2018.
7. That on 27.10.2018, complainant received a letter from the respondent offering “possession for fit-outs”. In this letter, the respondent admitted that an application for the grant of the Occupation Certificate (“OC”) for Tower A was still pending before the competent authority. The letter further stated that physical possession for fit-out purposes would be handed over subject to the complainant clearing all outstanding dues, with the final statement of account under preparation. It also required the complainant to enter into a maintenance agreement with a nominated agency, with the respondent undertaking to bear maintenance charges only for the period from 01.11.2018 to 31.12.2018. Thereafter, maintenance and power charges were to be borne by the complainant. Execution of the sale/conveyance deed was stated to be conditional upon full payment and the furnishing of a bank NOC. Copy of letter dated 27.10.2018, with offer of possession of Fit-outs, sent by the respondent is annexed as Annexure C-2.



8. That the complainant contends that the said letter dated 27.10.2018 was contrary to the terms of the ABA, as possession could not be lawfully offered without the grant of an OC.
9. That on 21.01.2019, respondent issued a further demand notice for "possession for fit-outs," claiming ₹24,90,474.88/- towards the balance sale price and other charges. The complainant asserts that this demand was illegal since the OC had not been obtained and the ABA did not provide for possession prior to the completion. The notice also required advance payment of six months' maintenance charges, despite no lawful possession being given, with the commencement of maintenance fixed from 01.02.2019. This was inconsistent with the earlier letter of 27.10.2018, which had fixed the date as 01.01.2019. Copy of demand notice dated 21.01.2019 is annexed as Annexure C-3.
10. That on 01.04.2019, the respondent issued another demand notice reducing the total claim to ₹23,04,156/-, instead of ₹24,90,474.88/- but again unilaterally revising the commencement of maintenance from 01.02.2019 to 01.01.2019. Copy of demand notice dated 01.04.2019 is annexed as Annexure C-4.
11. That the complainant was constrained to approach the respondent by way of a letter dated 28.02.2020, sent through speed post at the office of



Board of Directors of the respondent as well as Corporate/site Office address of the respondent to seek refund of the amount paid by the complainant. The letter sent to the office of Board of Directors of the respondent was returned back with the remarks as “insufficient address”. The letter sent to the corporate/site office by speed post was duly received, but no reply from the respondent has been received by the complainant. The copy of letter dated 28.02.2020 is annexed as Annexure C-5. The complainant also sent an email dated 30.09.2020 to the respondent making the same prayer of refund, but respondent didn't respond to the said email. The copy of email dated 30.09.2020 is annexed as Annexure C-6.

12. That the complainant alleges that the respondent's conduct shows that the project remained incomplete beyond the stipulated period and possession was being offered in violation of the ABA(Apartment Buyer Agreement) and RERA provisions, and that payments were being demanded under heads not envisaged in the ABA.
13. The complainant claims entitlement to a refund of the paid amount along with interest at the prescribed rate under Sections 18 and 19(4) of the RERA Act, 2016, from the respective dates of payment until realization, together with such other relief as this Authority deems fit.



B. RELIEFS SOUGHT

14. Complainant in his complaint has sought following reliefs:

- i) This Hon'ble Authority may kindly direct the respondent to refund the amount of ₹20,67,913/- paid by the complainant along with compound interest at the rate prescribed as per law till realization of the amount.
- ii) This Hon'ble Authority may kindly grant compensation to the complainant amounting to ₹25 lakhs for the mental harassment and agony being faced by him at the hands of the respondent.
- iii) This Hon'ble Authority may kindly be pleased to quash and set-aside any other measures and steps threatened to be taken by the Respondent qua the complainant or the property in question.
- iv) This Hon'ble Authority may kindly grant such other and further reliefs and orders in favour of the complainant and against the Respondent as this Hon'ble Authority would deem just and proper in facts and circumstances of the present case and as also would be warranted in equity.

C. WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

15. Learned counsel for the respondent filed the written submissions on 02.11.2023 pleading therein as under:



16. That both the parties entered into an out-of-court amicable settlement vide MOU dated 23.01.2021, in which the following was settled:

MEMORENDUM OF UNDERSTANDING

*"This Memorandum of Understanding is entered on 23rd day of February, 2021 by and between Emerald Home Developers Pvt. Ltd. through its authorized * Director Mr. Bharat Pal Singh, S/o Late Sh. Chidda Singh (Party of the First part) and Mr. Pramod Kumar Maheshwari, S/o Late Sh. Jagdish Prasad Maheshwari, R/o House No. 143, Sector-11C, Faridabad 121006 (Party of the Second part).*

- 1. Mr. Pramod Kumar Maheshwari is representing himself/family members/ relatives and friends, who are allottee(s) 08 (Eight) flats at 9th Floor in Tower A of the project Emerald Heights, Secter-88, Faridabad, developed by the first party. Mr. Pramod Kumar Maheshauri along with his friends/family members has booked these 08 flats during July/August 2016.*
- 2. After due deliberations and discussions, It is new agreed at settled between the parties that the first party shall sale there all 08 Flats, through the sources/ selling channels of the first party at the best price to its satisfaction and pay the advance amount received against the flats along with interest @12% per annum from the respective date of advances received till the date of full and final payment is made by selling all the flats.*
- 3. It is also agreed that all the flats shall be sold by 31st August, 2021 and the sales proceeds shall be directly paid to the second party or its loan provider bank, from the buyers of the respective flats. Simultaneous to payment to loan provider bank, release order/NOC shall be furnished, and transfer papers shall be executed by the by Second Party.*
- 4. It is also agreed that the second party is not concerned with the sale value of 'flats as he shall be paid advance along with interest as mentioned above. Any short fall resulting due to difference between the sales value and the amount of advance along with*



interest as mentioned above shall be paid by the first party to the second party.

5. *Any flats not sold till 31st August 2021, shall be taken over by 1st party and advance along with interest shall be returned to the second party. It is also agreed that under all circumstances the whole advance along with interest shall be paid to the second party by first party on or before 30 September 2021.*
6. *That the Second Party has initiated legal action against First Party by filling complaint cases in HRERA Panchkula which are listed tomorrow Le. 24-Feb-2021. The First Party shall inform the Authority about the present Memorandum of Understanding (orally) and shall seek adjournment on this ground. If upon the next date of bearing, HRERA Authority directs to file written settlement then a detailed as well as separate 08 settlements for each case may be required to be drafted and placed before the Authority."*

Copy of the MOU dated 23.02.2021 is annexed as Annexure A-2.

17. That the complainant, instead of following the agreed terms and conditions of the MOU, started selling the units in question on their own and entered into an Agreement to Sell dated 23.11.2022, whereby the unit in question was sold for a consideration of ₹45,50,000/- (Rupees Forty-Five Lakhs Fifty Thousand only). A copy of the said Agreement to Sell dated 23.11.2022 is annexed as Annexure A-3.
18. That it was the complainant who breached the terms of the said MOU dated 23.01.2021, as explained under:-
 - (i) Firstly, by not cooperating in the sale of the unit through the channels of the respondent as agreed in the MOU; and



(ii) Secondly, by independently selling the unit to a third party.

Now, without placing on record the complete facts, the complainant has started demanding interest on the sold-out unit, despite the MOU clearly stipulating that if any flat remained unsold till 31st August 2021, it would be taken over by the respondent company.

19. That the complainant also approached the National Company Law Tribunal, New Delhi vide CP(IB) No. 459/ND/2023 titled as *Pramod Kumar Maheshwari vs. Emerald Home Developers Pvt. Ltd.*, seeking the same relief as before this Hon'ble Authority. The complainant has not disclosed the pendency of the present proceedings before the Hon'ble NCLT, which demonstrates a lack of bona fides. The pendency of the aforesaid petition also attracts the principle against double jeopardy, and on this ground alone, the present complaint is liable to be dismissed with costs. A copy of the said petition dated 15.07.2023 is annexed as Annexure A-4. Thereafter, the Hon'ble NCLT has already issued notice in the matter and now the same is pending for consideration on 20.11.2023. A copy of said order dated 10.10.2023 passed by Hon'ble NCLT is annexed as Annexure A-5.
20. That by selling the unit in question and creating third-party rights, the complainant no longer falls within the definition of an "allottee" under



the RERA Act, thereby disentitling them from claiming relief before this Hon'ble Authority.

D. DOCUMENTS SUBMITTED BY BOTH THE PARTIES:-

21. Rejoinder dated 12.09.2024 has been filed by the complainant in reply to the written submissions filed by the respondent on 02.11.2023. The complainant has also filed an application dated 05.12.2024 for placing on record the calculations sheet of delayed interest claimed by the complainant in this matter. The respondent has filed written submission on 12.03.2025 in the office registry. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

22. During hearings, complainant reiterated the basic facts of the case and submitted that complainant entered into an Apartment buyer agreement on 16.08.2016. As per clause 1 of ABA, total sale consideration for the said apartment was fixed at ₹40,00,000/-. Complainant had paid an amount of ₹20,67,913/- on 10.08.2016. Respondent was obligated to deliver possession of the unit by 16.08.2018. However respondent has failed to handover possession of the unit by that date. Therefore,



complainant is seeking refund of his paid amount. He further submitted that the builder has sold the subject unit to a third party and the sale deed/registry has also been executed in favour of the said third party. He further submitted before the Authority that the complainant intends to file an application in the registry today itself.

23. On the other hand, learned counsel for the respondent appeared and submitted that the complainant had originally booked a flat in the year 2016 by paying a sum of ₹20,67,913/- through cheque, towards the total sale consideration of ₹40,00,000/-. That it was further submitted that the complainant, in clear violation of the terms of the Memorandum of Understanding (MoU), sold the unit to a third party at an enhanced consideration of ₹45,50,000/-, thereby relinquishing his rights in the said unit. That the learned counsel pointed out that the conveyance deeds for the respective units stand executed in favour of third parties by the complainants themselves in all the captioned complaints. That in light of the above, the complainant has already received an amount much in excess of the total payments made towards the unit, and having realised double the amount paid, he cannot now turn around and claim any interest from the respondent. That the learned counsel further submitted that since the complainants are no longer allottees of the units, this



Hon'ble Authority does not have the jurisdiction to entertain the present complaints. That it was also argued that once the MoU was executed between the parties, the earlier agreement ceased to have effect, and therefore, no relief can be claimed under the said agreement by the complainants. That in view of the aforesaid facts and circumstances, the learned counsel for the respondent prayed the Authority that the present complaints are frivolous, devoid of merits and liable to be dismissed. He further requested the Authority not to consider the complainant's request regarding the filing of the application today, and to pass its decision without taking the application into consideration.

F. ISSUES FOR ADJUDICATION

24. Whether the complainant can be granted the reliefs claimed?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

25. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as under:-

Factual matrix of the case is that admittedly, complainant booked a Flat No. 907, 9th Floor, Tower A, consisting of 2 BHK in the group housing colony known as "Emerald Heights" of the respondent on 16.08.2016. Apartment buyer agreement was executed between the parties on



16.08.2016. The total sale price of the flat was ₹40 lakhs as per para 1 of Apartment Buyer Agreement out of which complainant had paid an upfront payment of ₹20,67,913/- on 10.08.2016 as part payment of total sale consideration.

26. As per Clause 22 of the Apartment buyer agreement, developer was obligated to deliver possession of the unit within 24 months from the date of execution of the agreement. According deemed date of possession comes out to be 16.08.2018.
27. The first issue to be adjudicated by the Authority is whether complainant is entitled to the relief of refund of the paid amount and interest sought by him or not?
28. Authority is of the view that Under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, if the promoter fails to complete the project or hand over the possession by the agreed date, the allottee is entitled to either:
 - i) Withdraw from the project and claim refund of the amount paid along with prescribed interest; or
 - ii) Remain in the project and receive interest for every month of delay until possession is offered.



29. On 26.11.2020, alleging delay in possession, the complainant filed the present complaint seeking refund of the amount paid with interest. Ordinarily, in absence of any other agreement, this claim would be examined strictly within the framework of the BBA and Section 18 of the RERA Act. However, during the pendency of this complaint, on 23.01.2021 the complainant and the respondent voluntarily executed a Memorandum of Understanding (MOU). Clauses 3, 4, and 5 of the MOU altered the nature of the contractual relationship between the parties in the following ways, the parties agreed that all flats would be sold by 31.08.2021, and the sales proceeds would be directly remitted to the complainant or his lender. The complainant was expressly not concerned with the sale value, and any shortfall between sales proceeds and the principal + interest was to be borne by the respondent. If any flats remained unsold by 31.08.2021, the respondent would take them over and return the advance + interest to the complainant by 30.09.2021.

Relevant clauses of MOU are reproduced under:

3. *"It is also agreed that all the flats shall be sold by 31st August, 2021 and the sales proceeds shall be directly paid to the second party or its loan provider bank, from the buyers of the respective flats. Simultaneous to payment to loan provider bank, release order/NOC shall be furnished, and transfer papers shall be executed by the by Second Party.*



4. *It is also agreed that the second party is not concerned with the sale value of 'flats as he shall be paid advance along with interest as mentioned above. Any short fall resulting due to difference between the sales value and the amount of advance along with interest as mentioned above shall be paid by the first party to the second party.*
 5. *Any flats not sold till 31" August 2021, shall be taken over by 1st party and advance along with interest shall be returned to the second party. It is also agreed that under all circumstances the whole advance along with interest shall be paid to the second party by first party on or before 30 September 2021."*
30. The execution of the MOU amounts to a novation of contract within the meaning of Section 62 of the Indian Contract Act, 1872, whereby the parties mutually agreed to substitute the original BBA obligations with a new arrangement for settlement. Once such novation occurs, the original contract (BBA) ceases to be enforceable and the rights and liabilities of the parties are determined by the new agreement unless that agreement is set aside by a competent forum.
31. The RERA Authority derives its power to grant relief from the terms of the BBA read with the provisions of the RERA Act. When the parties themselves replaced the BBA with another binding agreement (MOU) that does not envisage possession to the complainant but provides an alternative mode of settlement, the Authority cannot enforce the original BBA unless the MOU is first set aside in independent proceedings. The



complainant has neither sought to set aside the MOU nor challenged its validity before this Authority or any other forum.

32. Even if the MOU is examined on merits, the relief still cannot be granted. Vide order dated 17.03.2025, both parties were given opportunity to lead evidence on the question of who sold the unit to the third party purchaser. The complainant and respondent have both asserted that the other party has effected the sale, but neither has produced conclusive proof. It is, however, undisputed that:

- The flat now stands conveyed to a third party; and
- The complainant has received the principal sum of ₹20,67,913/-. It is an admitted fact by the complainant and it is recorded vide order dated 04.11.2024 passed by the Authority.

The Authority observes that the agreement to sell annexed as Annexure R-3 at page no. 12 does not bear the signatures of the respondent, rather it bears the signatures of the complainant and the third-party purchaser. This circumstance prima facie supports the inference that the flat was sold by the complainant himself. Moreover, even if the respondent's claim is accepted that the complainant sold the flat at an enhanced consideration of ₹45,50,000/, then the complainant has already realised more than double the amount invested. The principle underlying Section



18 is compensatory in nature; interest for delay is intended to make good the loss suffered by the allottee due to non-delivery of possession, not to confer a windfall or facilitate unjust enrichment. In cases where the allottee has already secured a price significantly above the original investment, the element of loss disappears and the claim for interest becomes untenable. Moreover, complainant has failed to provide any documentary evidence that the flats were sold by the respondent. Lastly, the Authority observes that the dispute regarding *who actually sold the unit* is in the nature of a commercial accounting dispute not determinable within the limited summary jurisdiction of the Authority, particularly in absence of conclusive documentary evidence from either side.

33. The Authority further observes that the complainant has, of his own volition, entered into the Memorandum of Understanding dated 23.01.2021 during the pendency of the present proceedings. The said MOU was not entered into under any apparent coercion, duress, or misrepresentation and the complainant has not challenged its validity before any competent forum. In fact, the complainant has acted upon the MOU as is evident from his own statement dated 31.12.2022 admitting receipt of the principal sum of ₹20,67,913/-. Having elected to adopt the settlement mechanism under the MOU and derived benefit from it, the



complainant cannot now resile from its terms when seeking relief before this Authority. It is a settled legal principle, as embodied in the doctrine of *approbate and reprobate*, that a party cannot, at the same time, accept and reject the same instrument. In the present case, the complainant seeks to rely on the original BBA for claiming interest under Section 18 of the RERA Act, while simultaneously retaining the benefit accrued under the substituted contractual arrangement (MOU). Such conduct amounts to selectively invoking parts of different agreements to obtain a more favorable outcome, which is impermissible. The Authority, therefore, holds that once the complainant has accepted and acted upon the MOU, the reliefs available to him must be determined strictly within the framework of that MOU, unless and until it is set aside in appropriate proceedings.

34. As per established principles under the Indian Contract Act, 1872, once a contract is voluntarily entered into and acted upon by both parties, it assumes binding legal force. A Settlement Deed/MOU executed with mutual consent operates as such a contract. It can only be invalidated if it is challenged before a competent court and declared void on limited and recognized legal grounds such as: Coercion, Fraud, Misrepresentation, Undue influence and Mistake of fact or law. In the



present case, no such challenge has been made before any competent court, nor has the Complainant produced any evidence of vitiating factors.

35. Further, the Complainant's signatures appear on every page of the MOU document, further suggesting that the terms were duly acknowledged and accepted at the time of execution. The Authority has also cross checked the signatures done on the affidavit attached by the complainant in his complaint book and the signatures on the MOU which are the same. Moreover, there is no evidence of mental incapacity, undue influence, or procedural unfairness in the negotiation or execution of the settlement agreement. The absence of such vitiating elements precludes the Authority from interfering with the terms of a valid private contract. This Authority reiterates that: RERA is a statutory forum for redressal of violations of promoter obligations under the RERA Act. It is not a substitute for a civil court and cannot exercise powers of judicial review over private contracts voluntarily entered into by the parties
36. Under Section 31 of the Real Estate (Regulation and Development) Act, 2016, this Authority is empowered to adjudicate complaints related to non-compliance with statutory duties imposed upon promoters under the Act, the Rules, or the Regulations made thereunder. However, where



parties voluntarily enter into a private settlement that resolves all outstanding claims and the same is subsequently acted upon, the Authority cannot reopen or set aside such a settlement unless there is a continuing statutory breach or the agreement itself stands vitiated under law.

37. This position on the finality and enforceability of voluntary settlements is well-settled in law and finds authoritative support in the judgment of the Hon'ble Supreme Court in the case titled as *Wg. Cdr. Arifur Rahman Khan & Ors. v. DLF Southern Homes Pvt. Ltd.*, decided on 24.08.2020 and reported in **2020 SCC OnLine SC 667**. In **para 37** of the judgment, the Supreme Court observed as under:

“However, the cases of the eleven purchasers who entered into specific settlement deeds with the developers have to be segregated. ... These eleven flat purchasers having entered into specific deeds of settlement, it would be only appropriate and proper if they are held down to the terms of the bargain. We are not inclined to accept the contention... that the settlement deeds were executed under coercion or undue influence since no specific material has been produced on record to demonstrate the same.”

The Court unequivocally held that where a settlement deed is voluntarily and specifically executed and no evidence of coercion, fraud, or undue influence is adjudicated, the signatory cannot repudiate the settlement unilaterally. This pronouncement aligns precisely with the present case as the Complainant voluntarily signed the MOU after due deliberation.



There is no credible evidence produced to suggest that the MOU was signed under any form of coercion, fraud, misrepresentation, or undue influence. As per the binding precedent in *Arifur Rahman Khan*, once a voluntary settlement is reached and acted upon, it cannot be set aside at the whim of a party unless it is expressly vitiated in a competent forum and that is clearly not the case here. Hence, the Authority concludes that the present complaint is not maintainable under RERA Act, 2016.

38. The complainant has already alienated the units in question and is no longer an allottee of the respondent. This is evident from the agreement to sell executed between the complainant and the third-party purchaser, which does not bear the signatures of the respondent, and from the fact that the conveyance deed has been duly executed in favour of the third party in respect of the units originally booked by the complainant. Consequently, the units no longer stand in the name of the complainant. Therefore, the complainant is not in a position to claim relief of interest accrued on account of delay in possession from this Authority. Hence, the present complaint is not maintainable before the Authority on this ground as well.
39. As the Authority has already held that the present complaint is not maintainable under RERA Act, 2016 as such the reliefs claimed by the



complainant cannot be granted. Thus, the Authority is not commenting on the merits of this case at this stage.

40. The complainant is also seeking compensation amounting to 25 lakhs for the mental harassment and agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.
41. Hence, the captioned complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



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NADIM AKHTAR
[MEMBER]